

Impeachment Grounds: Part 3: Hamilton, Wilson and Story

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Summary

This is a collection of selected background materials pertinent to the issue of what constitutes impeachable misconduct for purposes of Article II, section 4 of the United States Constitution quoted below. It includes excerpts from No.65 of the FEDERALIST PAPERS by Alexander Hamilton, and from the writings of his contemporaries Supreme Court Justices James Wilson and Joseph Story. It is the third of six segments that together with footnotes comprise, *Impeachment Grounds: A Collection of Selected Materials*, CRS Report 98-882.

The President, Vice President and all Civil Officers of the United States, shall be removed from Office on impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. U.S.Const. Art. II, §4

The Federalist Papers

No. 65 (Hamilton)

“A well constituted court for the trial of impeachments, is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt,” THE FEDERALIST PAPERS, 396-97 (Rossiter ed. 1961).

James Wilson

“Impeachments were known in Athens. They were prosecuted for great and public offences, by which the commonwealth was brought into danger. They were not referred to any court of justice, but were prosecuted before the popular assembly, or before the senate of five hundred....

“It is evident that, in England, impeachments ... could not exist before the separation of the two houses of parliament....

“We find the commons appearing as the grand inquest of the nation, about the latter end of the reign of Edward the third. They then began to exhibit accusations for crimes and misdemeanors, against offenders who were thought to be out of the reach of the ordinary power of the law....

“In the United States and Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments....” I WORKS OF JAMES WILSON [1790-1791], 425-26 (1967 ed.)

Joseph Story

“§785. As the offences to which the remedy of impeachment has been, and will continue to be principally applied, are of a political nature, it is natural to suppose, that they will be often exaggerated by party spirit, and the prosecutions be sometimes dictated by party resentments, as well as by a sense of the public good. There is danger, therefore, that in cases of conviction the punishment may be wholly out of proportion to the offence, and pressed as much by popular odium, as by aggravated crime. From the nature of such offences, it is impossible to fix any exact grade, or measure, either in the offences, or the punishments; and a very large discretion must unavoidably be vested in the court of impeachments, as to both.

* * *

“§796. The next inquiry is, what are impeachable offences? They are ‘treason, bribery, or other high crimes and misdemeanors.’ For the definition of treason, resort may be had to the constitution itself; but for the definition of bribery, resort is naturally and necessarily to the common law.... Now, neither the constitution, nor any statute of the United States has in any manner defined any crimes, except treason and bribery, to be high crimes and misdemeanor, and

as such impeachable.... It will not be sufficient to say, that in the cases, where any offence is punished by any statute of the United States, it may, and ought to be deemed an impeachable offence. It is not every offence, that by the constitution is so impeachable. It must not only be an offence, but a *high* crime and misdemeanor....

“§797. Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it,” I STORY, COMMENTARIES ON THE CONSTITUTION, §§785, 796, 797 (Cooley ed. 1873).

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